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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.21 and 73.37)
of the Commission's Rules to Provide)
for Facilities Changes by Stations Operating)
in the Expanded AM Band (1605-1705 kHz))
)

MB Docket No.
RM No. 11136

To: Office of the Secretary
Attn: Audio Division
Media Bureau

COMMENTS OF COX RADIO, INC.

Cox Radio, Inc. ("Cox"), by its attorneys, hereby submits these comments in response to the *Notice* in the above-captioned proceeding.¹ The *Notice* requests comment on a Petition for Rulemaking ("Petition") filed by InterMart Broadcasting of Georgia, Inc., Rama Communications, and Multicultural Radio Broadcasting, Inc. ("Joint Petitioners") seeking to amend the Commission's rules to designate AM expanded band stations as Class B stations and permit such stations to operate with up to 50 kW effective radiated power with directional antennas.² By these Comments, Cox urges the Commission to dismiss the Petition because increasing the permitted power of AM expanded band stations beyond 10 kW would violate

¹ Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, *Public Notice*, Report No. 2686 (rel. Jan. 5, 2005) ("*Notice*"). Cox, either directly or through subsidiaries, owns and operates seventy-eight AM and FM radio stations throughout the United States.

² Petition for Rulemaking in the Matter of Amendment of 73.21 and 73.37, of the Commission's Rules to Provide for Facilities Changes by Stations Operating in the Expanded AM Band (1605-1705 kHz), filed by InterMart Broadcasting of Georgia, Inc., Rama Communications, and Multicultural Radio Broadcasting, Inc. on Dec. 15, 2004 (the "*Petition*").

international agreements. Moreover, allowing AM expanded band stations to use complex directional antennas would undermine the Commission's policy goals of reducing interference and congestion in establishing the AM expanded band. Accordingly, the Commission should dismiss the petition for rulemaking forthwith.

I. INTERNATIONAL AGREEMENTS PROHIBIT INCREASING THE POWER LEVEL OF AM EXPANDED BAND STATIONS.

Although the Commission established technical rules for the AM expanded band (1605-1705 kHz) in the United States in 1991, the allocation of 1605-1705 kHz for radio services was the result of "an intensive long-term planning effort which was conducted on a global scale," dating back to 1979.³ The 1979 International Telecommunication Union World Administrative Radio Conference allocated 1605-1705 kHz to the western hemisphere (Region 2) for radio broadcasting. The United States sent delegates to the conference from the U.S. Department of State, the Commission, National Telecommunications and Information Administration (NTIA) and industry representatives.⁴ Implementation of the radio broadcast service in the spectrum was intended to occur in accordance with a future regional plan.⁵

In 1984, the Commission began a series of Notices of Inquiries seeking comments to assist the Commission in developing recommendations for the United States' proposals for the 1605-1705 kHz Band in preparation for two sessions of a regional international conference.⁶ In

³ *Review of the Technical Assignment Criteria for the AM Broadcast Service, Report and Order*, 6 FCC Rcd 6273, ¶ 198, n.76 (1991) ("Report and Order").

⁴ Report and Order, ¶ 198, n.76.

⁵ *Id.*

⁶ See, e.g., *Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band, Fourth Notice of Inquiry*, 3 FCC Rcd 4497 (1988) ("Fourth Notice of Inquiry"); *Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the*

1986 and 1988, a two-session Regional Administrative Radio Conference was held which established the technical rules under which Region 2 nations would share the spectrum allocation.⁷ Representatives of the Department of State, FCC, NTIA, and the industry again represented the United States at this conference.⁸ These conferences led to a multilateral agreement governing service in the expanded band. In 1988, the United States entered the Regional Administrative Radio Conference to Establish a Plan for the Broadcasting Service in the Band 1605-1705 kHz in Region 2, Rio de Janeiro, 1988 Agreement ("Rio de Janeiro Agreement").⁹ The Rio de Janeiro Agreement assigned certain frequencies within the expanded band to the United States and, importantly, established a maximum limit of 10 kW ERP for such AM expanded band stations.¹⁰ The Regional Agreement was signed by representatives of twenty

Planning of Broadcasting in the 1605-1705 kHz Band, Third Report, 3 FCC Rcd 2345 (1988); *Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band, Third Notice of Inquiry*, 2 FCC Rcd 4295 (1987); *Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band, Second Report*, 1986 FCC Lexis 3876 (1986); *Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band, Second Notice of Inquiry*, 1985 FCC Lexis 4111 (1985); *Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band, First Report*, 1985 FCC Lexis 2830 (1985); and *Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band, First Notice of Inquiry*, 1984 FCC Lexis 2753 (1984).

⁷ Report and Order, ¶ 198, n.76.

⁸ *Id.*

⁹ See 1999 Report on International Negotiations, Spectrum Policy and Notifications, Planning & Negotiations Division, FCC International Bureau, FCC, 1999 FCC Lexis 3577, 65 (July 1999); Regional Agreement on Broadcasting Service Expansion in the Western Hemisphere, Treaty Doc. 102-10, 1988 U.S.T. Lexis 191 (1988) (Final Acts of the Regional Administrative Radio Conference to Establish a Plan for the Broadcasting Service in the Band 1605-1705 kHz in Region 2, Rio de Janeiro, 1988) ("Rio de Janeiro Agreement").

¹⁰ See, e.g., Rio de Janeiro Agreement, 1988 U.S.T. Lexis 191 at Letter dated July 22, 1991 from Lawrence Eagleburger, Department of State, to President George Bush (submitting to the

countries in the western hemisphere.¹¹ Coordination with countries beyond Canada and Mexico was required due to the long distances that AM signals can travel at night.¹²

In addition, pursuant to the Rio de Janeiro Agreement, the United States also entered into agreements with Canada and Mexico governing the 1605 to 1705 kHz band. On February 28, 1991, the Commission and the Department of Communications, Canada, entered into an Interim Working Arrangement regarding the 1605 to 1705 kHz band (the "Canadian Agreement"),¹³ and on August 11, 1992, the United States and Mexico entered into an Agreement Between the Government of the United States of America and the Government of the United Mexican States For the Use of the Band 1605 to 1705 kHz in the AM Broadcasting Service (the "Mexican Agreement").¹⁴ Pursuant to the Rio de Janeiro Agreement, these agreements also established the

President the Regional Agreement for the Use of Band 1605-1705 kHz and stating that the Rio de Janeiro Conference established a maximum power of 10 kW for the AM expanded band, as compared to 50 kW in the existing AM band.); Report and Order, ¶ 104, *Review of the Technical Assignment Criteria for the AM Broadcast Service, Notice of Proposed Rulemaking*, 5 FCC Rcd 4381, ¶ 7, n.10 (1990) ("NPRM"); Fourth Notice of Inquiry, ¶ 41 ("In regard to maximum power, the Expanded Band Agreement will contain an absolute maximum power of 10 kW.").

¹¹ Rio de Janeiro Agreement, 1988 U.S.T. Lexis 191 at Letter dated July 22, 1991 from Lawrence Eagleburger, Department of State, to President George Bush.

¹² See 1999 Report on International Negotiations, Spectrum Policy and Notifications, Planning & Negotiations Division, FCC International Bureau, FCC, 1999 FCC Lexis 3577, 64-65 (July 1999).

¹³ Interim Working Arrangement Between the Federal Communications Commission and the Department of Communications, Canada Relating to the AM Broadcasting Service in the Medium Frequency Band, at 1 (Feb. 28, 1991) ("This understanding is based on discussions between representatives of the two Governments regarding the desirability of the United States and Canada signing an Agreement concerning the use of the 1605-1705 kHz band, ensuing from decisions taken at the International Telecommunication Union Regional Administrative Radio Conference, Rio de Janeiro, June 1988").

¹⁴ Agreement Between the Government of the United States of America and the Government of the United Mexican States for the Use of the Band 1605 to 1705 kHz in the AM Broadcasting Service (Aug. 11, 1992) (stating that the US and Mexico enter into the agreement taking into account the 1988 Rio de Janeiro Agreement).

technical criteria for stations near the US-Canada and US-Mexico borders operating in the AM expanded band.

In 1991, as a result of these extensive proceedings and international caucuses, the Commission established the technical rules for the AM expanded band in the United States in accordance with the international agreements. The Commission noted that international agreements limited AM expanded band stations to a maximum power of 10 kW, as compared to the 50 kW limit for existing band Class B stations.¹⁵ Consequently, the Commission established specific technical parameters for the AM expanded band stations that included a limitation of 10 kW daytime power and 1 kW nighttime power.¹⁶

Adoption of Joint Petitioners proposal to allow AM expanded band stations to increase power to 50 kW would violate these international agreements. The Commission, in fact, already addressed such a proposal in the Report and Order and stated that it was constrained by international agreements from adopting an increased power level. The Commission stated, “[t]he suggestion of some commenters that power levels greater than 10 kW be allowed is not a viable option since the maximum power is restricted to that value by international treaty obligation.”¹⁷ Clearly, the Commission does not have the authority to breach international agreements by adopting Joint Petitioners’ proposal to increase power to 50 kW for AM expanded band stations. The Rio de Janeiro Agreement is to remain in force until revised by a competent administrative

¹⁵ Report and Order, ¶ 23, n.13.

¹⁶ *Id.*, ¶ 7.

¹⁷ See also Report and Order, ¶ 104. Both the Canadian Agreement and the Mexican Agreement also clearly prohibit the power of a broadcasting station in the AM expanded band from exceeding 10 kW. See Canadian Agreement at Annex 2, Section 5.1. See Mexican Agreement at Chapter 3.

radio conference for Region 2.¹⁸ Thus, the only means by which the Commission could adopt Joint Petitioners' proposal would be to coordinate with the U.S. State Department, NTIA, and industry to initiate a new radio conference for the western hemisphere to amend the multilateral international agreement governing the AM expanded band. The United States also would need to amend its bilateral agreements with Canada and Mexico. Such a conference likely would require further Notices of Inquiry as well, similar to the procedures that the Commission followed in connection with the 1986 and 1988 Regional Administrative Radio Conferences. The effort necessary for the Commission to coordinate with other agencies in the United States government and to convene a world conference to revise the international agreements to allow for an increase in power for the AM expanded band – an increase which specifically was prohibited in the international agreements and which may not even be feasible from a global standpoint – would strain the limited resources of the Commission and the United States government. At a time when the Commission is working on other proceedings on which it has afforded high priority, such as the establishment of the technical rules for digital radio,¹⁹ and at a time when the United States has more critical international concerns, embarking on a battle to increase the power of AM expanded band stations would not be the most effective use of the Commission's resources.

¹⁸ Rio de Janeiro Agreement, 1988 U.S.T. Lexis 191 at Article 14.

¹⁹ *Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service, Further Notice of Proposed Rulemaking and Notice of Inquiry*, MM Docket No. 99-325, FCC 04-99 (April 20, 2004).

II. ALLOWING THE USE OF DIRECTIONAL ANTENNAS WOULD UNDERMINE THE POLICY GOALS UNDERLYING ESTABLISHMENT OF THE AM EXPANDED BAND.

In establishing the technical parameters of the AM expanded band, the Commission sought to revitalize AM radio and alleviate congestion and interference in the AM band.²⁰ As a result, the Commission specifically declined to allow AM expanded band stations to utilize directional antennas (beyond simple directional antennas) due to policy concerns. Because the new expanded band sought to eliminate many of the problems in the existing band, the Commission perceived little need for directional antennas and declared, “[w]e wish to *minimize* the need for directional antennas in the expanded band.”²¹ In its decision establishing the rules, the Commission reiterated the policy considerations leading to the rejection of complex directional antennas in the expanded band:

One of our goals in this proceeding is to create an expanded band environment . . . [that] would result in reasonably low interference levels [C]omplex multi-tower directional antenna systems which produce irregularly shaped service areas are not consistent with our overall coverage ideals. Use of non-directional or simple directional antenna systems prevents the problems associated with the “shoehorning” of stations which are common in the existing band.²²

This policy rationale underlying the creation of the AM expanded band remains valid today. To allow AM expanded band stations to utilize complex directional antenna systems, leading to the problem of shoehorning stations and resulting in increased interference and congestion would contravene the Commission’s dual policy goals of trying to revitalize the AM service and minimize interference.

²⁰ Report and Order, ¶ 6.

²¹ NPRM, ¶ 50 (emphasis added).

Both international agreements and Commission policy dictate that the Joint Petitioners' proposals must be rejected. Therefore, for the reasons described herein, the Commission must dismiss the Petition for Rulemaking forthwith.

Respectfully submitted,

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Dated: February 4, 2005

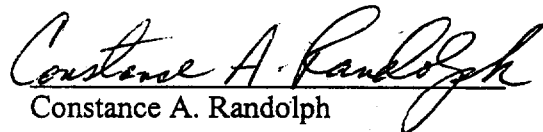
²² Report and Order, ¶¶ 101, 104.

CERTIFICATE OF SERVICE

I, Constance Randolph, a secretary at Dow, Lohnes & Albertson, do hereby certify that a copy of the foregoing "Comments of Cox Radio, Inc." has been sent this 4th day of February, 2005, via first-class U.S. mail, postage prepaid, to the following:

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